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6 **IN THE SUPREME COURT**
7 **STATE OF ARIZONA**
8

9 PETITION TO ADOPT RULE
GOVERNING APPLICATION TO
10 TRANSFER STRUCTURED
11 SETTLEMENT PAYMENT RIGHTS
12

Supreme Court No. R-07-0027

**Comments of the State Bar of Arizona
Regarding Petition to Adopt Rule
Governing Application to Transfer
Structured Settlement Payment Rights**

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14 The State Bar of Arizona agrees with the petitioner that the Arizona Rules of Civil
15 Procedure should be amended to include a new rule governing declarations accompanying
16 applications for the transfer of structured settlement payment rights, but it has several
17 suggestions to improve the petitioner's proposed rule.

18 **The Need for a New Rule**

19 A.R.S. § 12-2901, *et seq.*, charges the courts with the responsibility for overseeing
20 the propriety of a proposed transfer of structured settlement payments and requires courts
21 to determine (among other things) whether such a transfer "is in the best interest of the
22 payee, taking into account the welfare and support of the payee's dependents." A.R.S. §
23 12-2902(B)(3). However, apart from requiring the applicant to disclose the transfer
24 agreement, a disclosure statement, and the identity and ages of the payee's dependents, the
25 statute is silent about the information the applicant must submit to demonstrate that a
26 transfer is in best interests of the payee and his or her dependents. Moreover, as the

1 petition notes, neither the applicant nor the payee is required to disclose whether prior
2 transfers have been made, which has led to transfers being approved when the proceeds
3 have already been transferred under an earlier court order. A court's difficulties in
4 obtaining information about a payee's financial circumstances and prior transfers is
5 compounded by the fact that transfer applications are typically unopposed, meaning that a
6 court cannot rely on the adversary process to bring pertinent information to its attention.

7 **The State Bar's Proposed Changes**

8 The proposed rule goes a long way in plugging this hole in the statutory framework
9 by requiring a payee to submit a sworn declaration providing the court with information
10 about the payee's financial circumstances and any prior transfers of structured settlement
11 payment rights. The State Bar also agrees with the petitioner that the specific disclosures
12 required by the proposed rule would better enable a court to reach an informed decision
13 about the propriety of a proposed transfer. As such, the State Bar supports the petition,
14 but it has three, relatively minor, suggestions to improve the rule that the petitioner
15 proposes:

16 *First*, the State Bar recommends that the rule be incorporated in the Arizona Rules
17 of Civil Procedure as a new Rule 70.1. The rule should be located in a place where
18 practitioners can easily find it. The most logical place would be between Rules 64 to 71,
19 which govern (among other things) "special proceedings." Unfortunately, there are no
20 unreserved rule numbers in this range and the petitioner's proposed rule has no logical
21 connection to any of the rules now found there. For want of a better alternative,
22 numbering the proposed rule as Rule 70.1 is preferable because the proposed rule's
23 subject matter is sufficiently distinct from Rule 70 (governing "judgments for specific
24 acts" and "vesting title") that practitioners would not mistakenly infer that the two rules
25 are related.

1 *Second*, the State Bar recommends that the disclosure requirements be set forth as
2 part of the rule rather than be included as part of a form that appears within the rule. This
3 would be consistent with the format used throughout the rest of the rules, and would
4 underscore that the disclosure requirements are mandatory. Exhibit A to this comment
5 contains a revised version of the proposed rule consistent with this suggested formatting
6 change. The revision requires the disclosure of all the information required in the form
7 that is included in the petitioner's proposed rule, but it modifies the requirements of the
8 form in several minor respects:

9 (a) In addition to the disclosures set forth in petitioner's form, a new
10 requirement has been added in subpart (a)(9) to require the payee to disclose his or her
11 reasons for the proposed transfer of payment rights and the payee's plans for using the
12 proceeds from the transfer. Such a disclosure would aid a court in determining whether
13 the transfer is in the "best interests" of the payee and the payee's dependents.

14 (b) To make it easier to locate orders entered by other courts, a
15 requirement has been added to subparts (a)(5), (6) and (7) (which correspond with
16 questions 5-7 of the petitioner's proposed form) to require the payee to identify the court
17 and the date when a described order was entered. Additional language also has been
18 added to subpart (a)(7) to make it clear that a prior order authorizing a transfer may have
19 been issued by a "responsible administrative authority" (as defined in A.R.S. § 12-
20 2901.11) rather than a court.

21 (c) Subpart (a)(7)(B)(ii) is intended to require the disclosure of the
22 information requested in question 7(b)(ii) of the petitioner's proposed form. The question
23 in the form asks the payee to "[s]tate the amount of money and the manner in which the
24 money was used" in connection with past transfers. Subpart (a)(7)(B)(ii) clarifies that the
25 "amount of money" referenced in the question is the amount of money that the payee
26 received for making the prior transfer.

1 (d) Rather than merely asking the payee to "explain" any prior non-court
2 approved transfers (question 7(c) in the petitioner's proposed form), subpart (a)(8)
3 imposes the same disclosure requirements as found in subpart (a)(7), which governs prior
4 court-approved transfers. Payees would be required to disclose (i) the name of the
5 transferee, the payment amounts, and due dates of payments; and (ii) the amount of
6 money the payee received from the transferee for the transfer and the manner in which the
7 money was used.

8 (e) Subpart (a)(10) (which corresponds with question 8 in the petitioner's
9 proposed form) adds a requirement that the payee identify the addresses of creditors if the
10 payee intends to use the proceeds of a transfer to pay debts, and to specify the rate of
11 interest (if any) being paid on those debts.

12 *Third*, the State Bar suggests adding a new subpart (b) to require the transferee to
13 submit a declaration confirming, under oath, that (a) after making reasonable inquiry, the
14 transferee is not aware of any prior transfers of the payee's structured settlement rights
15 other than those disclosed by the payee; (b) the transferee has complied with its
16 obligations under A.R.S. § 12-2901, *et seq.*; and (c) to the best of the transferee's
17 knowledge after making reasonable inquiry, the proposed transfer would not contravene
18 any applicable law, statute, or the order of any court or other government authority.
19 Requiring a transferee to submit such a declaration would help ensure a transferee's
20 compliance with the statute and give transferees an incentive to investigate and disclose
21 whether prior transfers have occurred and whether a proposed transfer would be contrary
22 to a prior court order or applicable law.

23 The petitioner has reviewed the suggested changes shown in Exhibit A and has
24 authorized the State Bar to say that he agrees with them.

EXHIBIT A

State Bar's Suggested Modifications to Petitioner's Proposed Rule
(proposed additions are shown by underscoring and deletions are shown by "strike-through")

Rule 70.1 Application to Transfer Structured Settlement Payment Rights

(a) Every application for approval of the transfer of structured settlement rights filed pursuant to A.R.S. § 12-2901, *et. seq.*, shall include:

(a) A a Payee's Declaration in Support of Application in the following form, signed under oath by the payee, that sets forth the following information:

(1) The payee's name, address and age.

(2) The payee's marital status, and, if married or separated, the name of the payee's spouse.

(3) The names, ages, and place(s) of residence of the payee's minor children and other dependents, if any.

(4) The payee's monthly income and sources of income, and, if presently married, the monthly income and sources of income of the payee's spouse.

(5) Whether the payee is subject to any child support or spousal maintenance orders, and, if so, for each such order:

(A) the amount of the obligation, to whom it is payable, and whether there are arrearages, and, if so, the amount; and

(B) the jurisdiction and name of the court that entered the order, the case number of the action in which the order was entered, the parties to such action, and the date when the order was entered.

(6) Whether the payee is subject to any orders in any civil, probate, or criminal case which requires the payee to pay money to any person, and, if so, for each such order:

(A) the amount of the obligation, to whom it is payable, and whether there are arrearages, and, if so, the amount; and

1 (B) the jurisdiction and name of the court that entered the
2 order, the case number of the action in which the order
3 was entered, the parties to such action, and the date when
4 the order was entered.

5 (7) Whether there has been any previous application to any court or
6 responsible administrative authority for approval of a transfer of
7 payment rights under the structured settlement that is the subject
8 of the application, and, if so, for each such application:

9 (A) the jurisdiction and name of the court or responsible
10 administrative authority that considered the application,
11 the case number of the action in which the application
12 was submitted, the parties to such action, and the date
13 when the application was filed; and

14 (B) whether the application was approved or disapproved, the
15 date of the order approving or disapproving the transfer,
16 and, if approved:

17 (i) the name of the transferee and the payment
18 amount(s) and due dates of the payments involved
19 in the transfer; and

20 (ii) the amount of money the payee received from the
21 transferee for the transfer, if any, and the manner
22 in which the money was used.

23 (8) Whether the payee has ever transferred payment rights under
24 the structured settlement without court approval or the approval
25 of a responsible administrative authority, and, if so, for each
26 such transfer:

1 (A) the name of the transferee and the payment amount(s) and
2 due dates of the payments involved in the transfer; and

3 (B) the amount of money the payee received from the
4 transferee for the transfer, if any, and the manner in which
5 the money was used.

6 (9) The payee's reasons for the proposed transfer of payment rights
7 and the payee's plans for using the proceeds from the transfer.

8 (10) Whether the payee intends to use the proceeds from the
9 proposed transfer to pay debts, and, if so, the amount of each
10 such debt, the name and address of the creditor to whom it is
11 owed, and, if applicable, the rate at which interest is accruing on
12 such debt.

13 (b) A Transferee's Declaration in Support of Application, signed under
14 oath by the transferee, that states that:

15 (1) After making reasonable inquiry, the transferee is not aware of
16 any prior transfers of structured settlement rights by the payee
17 other than those disclosed in Payee's Declaration in Support of
18 Application;

19 (2) The transferee has complied with its obligations under A.R.S. §
20 12-2901, et seq.; and

21 (3) To the best of the transferee's knowledge after making
22 reasonable inquiry, the proposed transfer would not contravene
23 any applicable law, statute, or the order of any court or other
24 government authority.

(CAPTION)

**Payee's Declaration in Support of Application to Transfer Structured Settlement
Payment Rights**

I, _____, the payee, verify that the statements below are true and correct:

1. Payee's name, address and age: _____.

2. Marital Status:

_____ Never married; _____ Married; _____ Separated; _____ Divorced

If married or separated, name of spouse: _____.

3. Minor children and other dependents:

Names, ages, and places of residence: _____.

4. Income:

_____ (a) Payee's monthly income and sources:

_____.

_____ (b) If presently married, spouse's monthly income and sources:

_____.

5. Are you subject to any child support or spousal maintenance orders?

_____ Yes _____ No

If yes, state the amount of the obligation, to whom payable, whether there are arrearages, and the name of the jurisdiction in which the award was made, the names of the parties in the case and the case number for each obligation:

6. Are you subject to any orders in any civil, probate, or criminal case which requires you to pay money to any person?

If yes, state the amount of the obligation, to whom payable, whether there are arrearages, and the name of the jurisdiction in which the award was made, the names of the parties in the case and the case number for each obligation:

7. Previous transfers: Have you previously filed a application to transfer payment rights under the structured settlement that is the subject of this application?

_____ Yes _____ No

_____ If yes, for each application that you filed,

_____ (a) If the transfer was submitted for court approval, list the court, the case caption and the case number, and state whether the court approved or disapproved the transfer:

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